IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.617 of 2000.

Date of decision: September 20th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Liak Ram. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.V.K. Verma,Addl. Advocate General.

For the Respondent: Mr. I.D. Bali, Sr. Advocate with
Mr. Virender Bali, Advocate.

Surinder Singh, J (oral):

The respondent herein, faced the trial before the learned Judicial Magistrate, for the offences punishable under Sections 341, 324, 323 and 506 of the Indian Penal Code. Vide the impugned judgment, he was acquitted. The State felt aggrieved and filed the instant appeal, on the ground that the trial court has appreciated the evidence in a slip-shod and perfunctory manner and has set an unrealistic standard to evaluate the direct and cogent evidence of the prosecution.

The factual matrix of the instant case is that the respondent Liak Ram is a Lower Division Clerk and the complainant Ramesh Kumar, is an Assistant Engineer in the Himachal Pradesh State Electricity Board. Both were residing at the same place, but in the different buildings. It is alleged that on 12.11.1998, at about 9.30

Whether reporters of local Papers may be allowed to see the judgment? Yes.

p.m., when the complainant was coming from the house of Shri Bhandari Ram Gautam, A.E.E. of their department and was going towards his own residence, the respondent met him in the front of his quarter and told that "**TO BADA SDO BANTA HAI YEH TERI SARI THACH THACH SADA KE LIYE BAND KAR DOONGA"**. Thereafter, the respondent caught hold the complainant, gave blow on his left eye, which caused swelling. This incident was alleged to have been witnessed by Darshan Singh Gill, Surinder Singh and Bhandari Ram Gautam. On 13.11.1998, at about 6.30 p.m., the complainant after his duty was again going to the house of Bhandari Ram Gautam, he was restrained by the respondent. He caught hold of him from his neck and gave fist blow on his neck and tore off his shirt and also gave teeth bite causing bleeding injury on his neck.

The complainant got recorded his report Ext.PW8/A on 14.11.1998, in the Police Post Jhakari. He was medically examined. The Doctor found bruise linear injury on the left side of his neck, blackish bite marks over the side of neck and hemorrhage on the left eye and contusion on the right side of his ankle. All the injuries were simple, but injury No.2 was stated to be caused by a sharp weapon.

The police lodged a formal FIR and started investigation. In that process, recorded the statements of the witnesses, drew the site plan and also took into possession the shirt of the complainant Ext.P1. After completing the challan, it was presented in the court, for trial, under Sections 341, 324,323 and 506 of the Indian Penal Code.

The learned trial court acquitted the respondent, on the ground that there were contradictions which created a doubt and the shirt Ext.P1 was not torn as alleged and no buttons were

missing, which further strengthened the doubt on the authenticity of the prosecution case.

The appellant assailed the impugned judgment of acquittal in this appeal, styling as perverse.

I have heard Shri V.K. Verma, learned Additional Advocate General and also Shri I.D. Bali, learned Senior Advocate and have carefully reappraised the evidence on record.

At the very outset, I would like to say that neither there is any indication nor any proof with respect to the offence under Sections 324 and 506 of the Indian Penal Code, however, the learned Additional Advocate General has fairly and squarely argued that if the evidence of the complainant and his witnesses are gone through, the offence under Sections 323 and 341 of the Indian Penal Code are made out. Contra, Shri I.D. Bali, learned Senior counsel has supported the impugned judgment and took pains to pin point that there are contradictions in the statements of the prosecution witnesses, which were also noticed by the trial court. The reasoning given by the trial court is born out from the evidence on record.

Now, I proceed to legally scan the evidence. The statement of the complainant Ramesh Kumar (PW1) makes it crystal clear that he was way laid while passing through the residence of the respondent on 12.11.1998 at about 9.30 p.m. The respondent gave him the fist blow on his left eye. This incident was witnessed by PW2 Bhandari Ram Gautam. He had corroborated his version which is further supported by PW3 Surinder Singh and PW4 Darshan Singh who saw them holding each other. Dr. Rajender Bisht (PW6) has proved the simple injury on the person of the complainant and he has over-ruled the possibility that these could be self inflicted. As far as the incident, which had taken place on

13th November, 1998, again the complainant Ramesh Kumar, in his statement has categorically stated that at about 6.30 p.m., when he was going to give Tack phone to Bhandari Ram Gautam, the respondent gave him 2-3 fist blows on his chest and also gave tooth bite on his left side of the neck from where the blood came out and his shirt got blood stained. This fact is proved and corroborated by Dr. Rajinder Bishat (PW6) so observed in Medico legal certificate Ext.PW6/A. The blood stained shirt was taken in possession vide memo Ext.PW1/A to which the complainant has identified it as his own. This incident was witnessed by Bhandari Ram Gautam (PW2) also, who has lent strength to the prosecution case. However, PW-5 has not supported the case of the prosecution, yet he has proved the presence of the respondent on the spot.

In totality of the above circumstances, the offences under Sections 341 and 323 of the Indian Penal Code stand proved and the trial court has attached much and undue importance to the minor contradictions, therefore, I hold that the judgment of the trial court is perverse. Therefore, in my considered opinion, the case against respondent stands proved under Sections 341 and 323 of the Indian Penal Code but there is no evidence to establish the offence under Sections 324 and 506 of the Indian Penal Code. Therefore, I hold him guilty for the above offences except under Section 506 and 324 of the Indian Penal Code for the reasons recorded above. Accordingly, the appeal is partly accepted.

As far as the sentence part is concerned, the learned counsel for the respondent has argued that a lenient view may be taken as the incident had taken place in the year 1998 and the respondent has been facing the torture of trial and uncertainty in appeal for more than nine years and it is a case of trivial nature.

I have considered this aspect of the matter. It is true that the respondent had faced the trial for a long time and also uncertainty in appeal, however, keeping in view the fact that the respondent is an employee and is sole bread earner of the family and has no criminal history to his credit, I extend the benefit of Section 3 of the Probation of Offenders Act to him. Thus instead of passing a substantive sentence, the respondent is admonished. The matter stands finally disposed of.

September 20, 2007. **(Surinder Singh)**
(PDS) **Judge**.